

MELINDA HAAG (CABN 132612)  
United States Attorney

MIRANDA KANE (CABN 150630)  
Chief, Criminal Division

DAVID R. CALLAWAY (CABN 121782)  
MATTHEW A. PARRELLA (NYBN 2040855)  
Assistant United States Attorneys

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150 Almaden Blvd., Suite 900  
San Jose, California 95113  
Telephone: (408) 535-5042 (AUSA Parrella)  
Telephone: (415) 436-6991 (AUSA Callaway)  
Facsimile: (408) 535-5596  
E-mail: David.Callaway@usdoj.gov

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, ) No. CR 05-00812 RMW

Plaintiff, )

v. )

SUIBIN ZHANG, )

Defendant. )

**REQUEST BY THE PARTIES TO  
VACATE THE CURRENT PRETRIAL  
CONFERENCE, SCHEDULE A STATUS  
DATE, AND CONFIRM NEW TRIAL  
AND PRETRIAL CONFERENCE  
DATES; ORDER [ -----**

DATE: May 12, 2011  
TIME: 2:00 p.m.

Before The Honorable Ronald M. Whyte

Defendant and the government, through their respective counsel, hereby stipulate, subject to the Court's approval, that the pretrial conference, currently scheduled to occur on May 12, 2011, be vacated and the matter placed on the Court's calendar for status on **Monday, May 16, 2011**, at 9:00 a.m. The reasons for the stipulation are three-fold: First, based on the Court's own schedule, the trial that was scheduled to begin on May 23, 2011, has been continued, the parties understand, to June 13, 2011; the parties wish to confirm that new date at a status hearing. Second, the parties wish to discuss the status of defendant's pending motion to strike surplusage from the superseding

REQUEST TO VACATE PRETRIAL CONFERENCE  
AND SET STATUS DATE

1 indictment, given the Ninth Circuit's recent decision in *United States v. Nosal*, — F.3d —, 2011 WL  
2 1585600 (9<sup>th</sup> Cir. April 28, 2011). Finally, and most importantly, the parties have recently revived  
3 discussions regarding a possible settlement and wish to move the pretrial conference to a date a little  
4 closer to the new trial date, so as not to spend time preparing pretrial filings that could be better spent  
5 trying to resolve the case.

6 Assuming the Court approves this stipulation, no further time exclusion should be necessary: the  
7 Court has already excluded time through and including the previously-scheduled trial date of May  
8 23, 2011. In any event, the parties agree that the time through and including the proposed status date  
9 of May 16, 2011, should be excluded from the Speedy Trial Clock based on the need for effective  
10 defense preparation and continuity of defense counsel, the complexity of the case, and in light of the  
11 facts set forth in this stipulation. 18 U.S.C. § § 3161(h)(7)(A) and (B)(i) and (ii).

12 Dated: May 6, 2011

13 \_\_\_\_\_  
14 /s/  
MANUEL U. ARAUJO  
Assistant Federal Public Defender

15 Dated: May 6, 2011

16 \_\_\_\_\_  
17 /s/  
DAVID R. CALLAWAY,  
Assistant United States Attorney

### 18 **ORDER**

19 For the reasons set forth by the parties in the stipulation above, and good cause appearing,  
20 IT IS HEREBY ORDERED:

21 (1) the Pretrial Conference scheduled for Thursday, May 12, 2011, is VACATED.

22 (2) the parties shall appear instead on Monday, May 16, 2011, at 9:00 a.m., for a status  
23 hearing to discuss the pending motion to strike surplusage, confirm the trial date, and schedule a  
24 new pretrial conference date.

25 (3) to the extent any additional exclusion of time is necessary, the time up to and including  
26 May 16, 2011, is excluded from the Speedy trial clock based on the need for effective defense  
27 preparation and continuity of defense counsel, the complexity of the case, and in light of the facts

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1 set forth in the above stipulation. 18 U.S.C. § § 3161(h)(7)(A) and (B)(i) and (ii).

2  
3 Date: 5/11/11

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RONALD M. WHYTE  
United States District Judge